UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/CO/73/AZE
12 November 2001

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Seventy-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

AZERBAIJAN

1. The Committee considered the second periodic report submitted by the Azerbaijan Republic (CCPR/C/AZE/99/2) at its 1974th and 1975th meetings (see CCPR/C/SR.1974 and 1975), held on 26 October 2001. The Committee adopted the following concluding observations at its 1983rd meeting (CCPR/C/SR.1983), held on 1 November 2001.

A. Introduction

2. The Committee has examined the second periodic report of Azerbaijan. The Committee welcomes the frank and constructive explanation by the delegation of measures undertaken by the State party, since the presentation of its initial report. It further commends the delegation for supplying it with updated information about the legal situation in Azerbaijan, but regrets that it was not provided with more information with regard to the implementation of Covenant rights in practice.

B. Positive aspects

3. The Committee commends the State party for undertaking in a period of transition from totalitarian rule, and armed conflict with the resulting displacement of a large proportion of the population, the process of bringing its legislation into line with its international obligations. The Committee appreciates the enactment of a significant number of laws in order to harmonize domestic legislation with the requirements of the Covenant.

4. The Committee welcomes the abolition of the death penalty in 1998 as well as the State party's accession to the Second Optional Protocol to the Covenant, though with a reservation relating to wartime. It further welcomes the information provided by the delegation about the ratification of the Optional Protocol.

5. The Committee notes with satisfaction that under article 151 of the Constitution, international legal obligations, including the rights stipulated in the Covenant, prevail over domestic legislation in the event of a conflict between them.

6. The Committee expresses its satisfaction at the fact that an agreement has been reached between the State party and the International Committee of the Red Cross, by which the ICRC is authorized to visit Azerbaijani prisons and detention facilities.

7. The Committee welcomes the reform of the criminal procedure system and ministerial responsibilities, particularly the transfer of the jurisdiction over detention facilities from the Ministry of the Interior to the Ministry of Justice.

C. Principal subjects of concern and recommendations

8. While commending the constitutional provision stipulating that in a state of emergency the restriction of citizens' rights and liberties is subject to the State's international obligations (art. 71 (3)), the Committee is concerned that the notifications submitted by the State party on resorting to article 4 of the Covenant have been quite broad and vague.

The State party should ensure that the draft law on states of emergency, as well as any future application of that law, are compatible with article 4 of the Covenant and that in practice no derogation from rights should be made unless the conditions of article 4 have been met.

9. The Committee is concerned at the lack of an independent mechanism for investigating complaints against members of the police and prison guards. This fact may account for the small number of recorded complaints, in contrast to information about large numbers of violations received from non-government sources (arts. 2, 7, 9).

The State party should establish an independent body with authority to receive and investigate all complaints of excessive use of force and other abuses of power by law-enforcement officials, and initiate criminal and disciplinary proceedings against those found responsible.

10. While welcoming the steps taken to bring its law into compliance with international standards to prevent torture, the Committee is deeply concerned at the reported failure to ensure application of such legal provisions and at continuing reports of the use of torture and cruel, inhuman or degrading treatment or punishment. The Committee notes that the delegation could not provide clarifications on the number of investigations and prosecutions in regard to torture, particularly under the new Criminal Code, or on remedies provided to victims and their families, including rehabilitation and compensation (arts. 2, 7)

The State party should take all necessary measures to ensure the full implementation of its domestic and international obligations relating to torture and cruel, inhuman or degrading treatment or punishment. The State party should ensure the prompt, impartial and full investigation of all allegations of torture, the prosecution of persons responsible, as well as compensation to victims, or as the case may be, their families.

11. The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice (arts. 7, 9).

The State party should ensure scrupulous respect for these rights by its law enforcement agencies, procuracy and judiciary.

12. The Committee is concerned at the problem of overcrowding in prisons. The Committee notes that insufficient information has been provided by the State party concerning measures undertaken in this regard (art. 10).

The State party should take measures to overcome overcrowding in prisons and should ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity in compliance with the requirements of article 10.

13. The Committee is concerned at the lack of independent and transparent scrutiny of prison facilities.

The State party should institute a system for independent inspections of detention facilities, which should include elements independent of Government so as to ensure transparency and compliance with article 10.

14. While appreciating the steps that have been initiated by the State party to reform the judiciary, including Presidential Decree of 17 January 2000 to improve the procedures for the appointment of judges, the Committee is concerned at reports of irregularities during the selection procedure in practice. Furthermore, the Committee is concerned at the lack of security of tenure for judges, and at the fact that decisions concerning the assignment of judges and affecting their seniority appear to be made at the discretion of the administrative authorities, may expose judges to political pressure and jeopardize their independence and impartiality. The Committee considers that the new Law on the Bar may compromise lawyers' free and independent exercise of their functions (art. 14).

The Committee recommends the institution of clear and transparent procedures to be applied in judicial appointments and assignments, in order to ensure full implementation of the legislation in practice and to safeguard the independence and impartiality of the judiciary. The State party should furthermore ensure that the criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers. The State party should provide information on the distinction between "licensed lawyer" and member of the Bar.

15. The Committee is deeply concerned that it received no information on the extent of the problem of trafficking in women, as the State party is reportedly a country of both origin and transit. While acknowledging the need for legislation to combat trafficking of women, the delegation noted that trafficking is not defined as a separate criminal offence if the victim is not a minor; moreover, the delegation gave no conclusive information on action to combat such trafficking (arts. 3, 8).

The State party should take resolute measures to combat this practice, which constitutes a violation of several Covenant rights, including those in articles 3 and 8, by imposing sanctions against those found responsible.

16. The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life-threatening abortions.

The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and to adopt appropriate family planning programmes to this effect.

17. With regard to articles 3, 9 and 26 of the Covenant, the Committee is concerned at the incidence of violence against women, including rape and domestic violence. The Committee takes note with concern that domestic violence is apparently not acknowledged to be a problem. The Committee notes as well that information on these matters is not systematically maintained, that women have a low level of awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with.

The State party should take effective measures to combat violence against women, including marital rape. The State party should also organize an effective information campaign to address all forms of violence against women. The Committee urges that reliable data be systematically collected and maintained on the incidence of violence and discrimination against women in all their forms.

18. The Committee is concerned that the traditional attitudes to women still prevail, whereby a woman's primary role is as wife and mother (articles 3 and 26 of the Covenant).

The State party should take measures to overcome traditional attitudes regarding the role of women in society. It should organize special training programmes for women and regular awareness campaigns in this regard.

19. The Committee notes that, despite recent improvements, the proportion of women participating in public life and the private sector workforce, particularly at senior levels of the executive and in Parliament, remain at unacceptably low levels (art. 3).

The State party should take appropriate steps towards achieving a balanced representation of women in these fields.

20. With regard to the rights of aliens, the Committee considers that the provisions in the State party's legislation providing for the principle of reciprocity in guaranteeing Covenant rights to aliens are contrary to articles 2 and 26 of the Covenant. The Committee is equally concerned that according to article 61 of the Constitution, the right to immediate access to legal representation is guaranteed only to citizens.

The Committee recommends that the State party take appropriate measures to guarantee all rights of aliens in accordance with articles 2 and 26 of the Covenant.

21. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

22. The Committee is concerned at the extensive limitations on the right to freedom of expression of the media. While noting the explanations given by the delegation with regard to this issue, the Committee remains concerned at reports of harassment and criminal libel suits used to seek to silence journalists critical of the Government or public officials, as well as the closure of print media outlets and the imposition of heavy fines, aimed at undermining freedom of expression (art. 19).

The Committee urges the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression. Criminal defamation legislation should be brought into line with article 19 by ensuring a proper balance between the protection of a person's reputation and freedom of expression.

23. The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (arts. 19, 22, 25).

The Committee urges the State party to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance. With regard to political parties, the Committee urges the State party to take all necessary measures to ensure that registration is not used to silence political movements opposed to the Government and to limit the rights of association guaranteed by the Covenant. In particular, legislation should clarify the status of associations, non-governmental organizations and political parties in the period between the request for registration and the final decision; such status should be consistent with articles 19, 22 and 25 of the Covenant.

24. The Committee is concerned at the serious interference in the electoral process, whilst noting the delegation's statement with respect to the punishment and dismissal of those responsible and the cancellation of the results of elections in 11 districts where serious violations had been found and the holding of new elections in those districts.

The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant.

25. The Committee is concerned at the apparently low level of awareness amongst the public of the provisions of the Covenant (art. 2).

The State party should widely publicize the provisions of the Covenant and the availability of the complaint mechanism to individuals as provided upon the entry into force in the State party of the Optional Protocol.

26. The State party should widely publicize the present examination of its second periodic report by the Committee and, in particular, these concluding observations.

27. The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding measures taken to ensure the compatibility with article 4 of the draft law on states of emergency (paragraph 8 above); investigation of all allegations of torture, the prosecution of those responsible and compensation provided to victims, or, as the case may be, their families (para. 10); legal and practical measures taken to combat violence against women and trafficking (paras. 15 and 17); measures taken to ensure that any restrictions on freedom of expression do not exceed those permissible under article 19 (3) of the Covenant (para. 22); as well as measures taken to ensure that general elections adequately reflect popular choice (para. 24). The Committee requests that information concerning the remainder of its recommendations be included in the third periodic report, to be submitted by 1 November 2005.

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